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**In the  
Supreme Court of the United States**

JAWDAT ELIA,

*Petitioner,*

v.

ALBERTO GONZALES, ATTORNEY GENERAL  
OF THE UNITED STATES,

*Respondent.*

**On Petition for a Writ of Certiorari to the United  
States Court of Appeals for the Sixth Circuit**

**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED FOR REVIEW**

1. Whether the United States Court of Appeals for the Sixth Circuit erred and is in conflict with the United States Court of Appeals for the Seventh Circuit in finding that there was no denial of procedural due process in the Immigration and Naturalization Service's delay of approximately five (5) years in conducting a hearing in Petitioner's case and, further, that the delay was not fundamentally unfair even though an intervening change in the law deprived Petitioner of any eligibility for discretionary relief.

2. Whether the United States Court of Appeals for the Sixth Circuit erred in its decision and whether this decision is in conflict with various District Courts of the Second Circuit in a § 212(c) waiver case in defining the phrase, "term of imprisonment," as the time actually served by Petitioner, when, in reality, that five (5)-year sentence, even as served by Petitioner, was ultimately later substantially reduced to a minimum sentence of only two (2) years, as finally imposed by the state criminal courts.

**PARTIES TO THE PROCEEDING  
AND RULE 29.6 STATEMENT**

*Petitioner* is Jawdat "Joe" Elia, an individual.

*Respondent* is Alberto Gonzales, Attorney General of the United States of America.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Jawdat "Joe" Elia, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in a decision which refused to vacate his deportation to Iraq.

### **CITATIONS OF OPINIONS AND ORDERS**

The first published opinion of the Court of Appeals for the Sixth Circuit in *Jawdat Elia v. Alberto Gonzales, Attorney General*, 418 F.3d 667 (6<sup>th</sup> Cir. 2005), decided and filed on July 22, 2005 is reprinted in the Appendix at pp. 20a – 34a.

The published amended opinion of the Court of Appeals for the Sixth Circuit in *Jawdat Elia v. Alberto Gonzales, Attorney General*, 2005 WL 3304600 (6<sup>th</sup> Cir. Oct. 24, 2005), decided and filed on October 24, 2005, is reprinted in the Appendix at pp. 1a – 15a.

The unpublished order of Board of Immigration Appeals is reprinted in the Appendix at p. 37a.

The unpublished Oral Decision of the Immigration Court is reprinted in the Appendix at pp. 38a – 45a.

### **BASIS FOR JURISDICTION IN THIS COURT**

The United States Court of Appeals for the Sixth Circuit filed its amended Judgment and Opinion on October 24, 2005, and entered an order denying Petitioner's timely petition for rehearing on September 29, 2005.

This petition for writ of certiorari is timely filed within ninety (90) days of the date of the Court of Appeals' denial of

Petitioner's properly filed petition for panel rehearing. 28 U.S.C. § 2101 (c). *See also* Revised Supreme Court Rule 13.3.

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the Sixth Circuit's decision on a writ of certiorari.

### **CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS INVOLVED**

#### **United States Constitution, Amendment V:**

No person shall be...deprived of life, liberty, or property, without due process of law...

#### **8 C.F.R. § 1212.3:**

(a) ...An application by an eligible alien for the exercise of discretion under former section 212(c) of the Act (as in effect prior to April 1997)...shall be submitted to the immigration judge by filing...Application for Advance Permission to Return to Unrelinquished Domicile.

(f) ...An application for relief under former section 212(c) of the Act shall be denied if:

(4) The alien has been charged and found to be deportable and removable on the basis of a crime that is an aggravated felony...except as follows:

(i) An alien whose convictions for one or more aggravated felonies were entered pursuant to plea agreements made on or after November 29, 1990, but prior to April 24, 1996, is ineligible for section 212(c) relief only if he or she has served a

term of imprisonment of five years or more for such aggravated felony or felonies, and

(ii) An alien is not ineligible for section 212(c) relief on account of an aggravated felony conviction entered pursuant to a plea agreement that was made before November 29, 1990...

**8 U.S.C. § 1252(a)(2)(C):**

(C) Orders against criminal aliens:

Notwithstanding any other provision of law... no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense...

**The REAL ID Act, Public Law 109-13, § 106:**

(a) Section 242 of the Immigration and Nationality Act (8 U.S.C. § 1252) is amended--

in subsection (a)--

(A) in paragraph (2)--

(iii) by adding at the end the following:

(D) JUDICIAL REVIEW OF CERTAIN LEGAL CLAIMS—Nothing in subparagraph (B) or (C), or in any other provision of this Act (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions